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FM AMEMBASSY TUNIS
TO RUEHC/SECSTATE WASHDC PRIORITY 4483
INFO RUEHAS/AMEMBASSY ALGIERS PRIORITY 7620
RUEHEG/AMEMBASSY CAIRO PRIORITY 1566
RUEHLO/AMEMBASSY LONDON PRIORITY 1422
RUEHNK/AMEMBASSY NOUAKCHOTT PRIORITY 0960
RUEHFR/AMEMBASSY PARIS PRIORITY 1895
RUEHRB/AMEMBASSY RABAT PRIORITY 8509
RUEHTRO/AMEMBASSY TRIPOLI PRIORITY 0194
RUEHCL/AMCONSUL CASABLANCA PRIORITY 4190
RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY
RUCPDOG/USDOC WASHDC PRIORITY

UNCLAS SECTION 01 OF 04 TUNIS 000172

SIPDIS

SENSITIVE
SIPDIS

STATE FOR EEB/TPP/IPE (BOGER) AND NEA/MAG (HARRIS)
STATE PASS USTR (GROVES AND BURKHEAD)
USDOC FOR ITA/MAC/ONE (NATHAN MASON), ADVOCACY CTR
(REITZE), AND CLDP (TEJTEL AND MCMANUS)
USDOC PASS USPTO (ADAMS, BROWN AND MARSHALL)
CASABLANCA FOR FCS (ORTIZ)
EGYPT FOR FCS (MOEZIE)
LONDON AND PARIS FOR NEA WATCHER

E.O. 12958: N/A
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [TS](#)
SUBJECT: TUNISIA: 2008 SPECIAL 301 REVIEW

REF: A. STATE 9475
 [1](#)B. TUNIS 68
 [1](#)C. 07 TUNIS 1249
 [1](#)D. 07 TUNIS 1135
 [1](#)E. 07 TUNIS 992
 [1](#)F. 07 TUNIS 271
 [1](#)G. 06 TUNIS 2771
 [1](#)H. 06 TUNIS 2424

Summary

[1](#)1. (SBU) Post recommends that Tunisia not be placed on the Special 301 Watch List. GOT officials at the highest levels -- including President Ben Ali himself -- continue to publicly stress the importance of intellectual property rights (IPR), demonstrating the high-level commitment that exists for IPR protection. While more work remains to be done in preventing optical disc piracy, in 2007 the GOT's interagency IPR enforcement brigade conducted 735 raids, leading to the issuance of 314 infractions, the closure of 73 establishments and 34 court cases. This year several US pharmaceutical companies received authorization to import products that were previously restricted under the GOT's "correlation system." However, not all US pharmaceutical companies have been able to remove their products from the list of correlated products. In addition, US pharmaceutical companies express lingering concerns that Tunisia does not protect data exclusivity, despite GOT assertions that it is fully TRIPS-compliant. Although we would like to see more, and faster, improvements on IPR enforcement and final resolution of outstanding US pharmaceutical company concerns, we believe that constructive engagement, including through the TIFA process, is the best approach to resolve ongoing IPR concerns. End Summary.

Commitment at the Highest Levels

¶2. (U) GOT officials at the highest levels -- including President Ben Ali himself -- continue to publicly stress the importance of intellectual property rights (Ref E). IPR is considered a legal tool for the protection of products and an incentive to stimulate economic development. The GOT's lead agencies for IPR protection -- the National Institute for Standardization and Industrial Property (INNORPI - Institut National de la Normalisation et de la Propriete Industrielle) and the Tunisian Copyright Protection Organization (OTPD - Organisme Tunisien de Protection des Droits d'Auteur) -- are active participants in USG-funded training, including workshops and seminars sponsored by the US Patent and Trademark Organization (USPTO). Additionally, GOT officials in ministries such as Commerce, Justice, Development and International Cooperation, Public Health and Communications are also stressing the importance of intellectual property rights. In a February 15 meeting with Econ/CommercialOff to discuss the Special 301 review Ministry of Commerce Director of WTO Relations Wajdi Khemakhem maintained that Tunisia is WTO compliant. He also said that the GOT continues to beef up its IPR enforcement. According to Khemakhem, Tunisia's Department of Economic Control and Competition continues its efforts to prevent and control counterfeit products through raids, warnings, and seizures, including working to get the large retailers such as Geant and Monoprix to remove pirated optical media from their shelves. Media coverage of GOT enforcement operations, as well as official statements and private sector commentary in support of IPR, continue to raise public awareness on this issue.

Compliance with TRIPS and Other International Obligations

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¶3. (U) The GOT states that it is in full compliance with TRIPS and all international obligations for which it is a signatory. Tunisia is a member of the World Intellectual Property Organization (WIPO) and is a signatory to international conventions, including: the United Nations (UNCTAD) Agreement on the Protection of Patents and Trademarks, the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention Regarding Trademarks, among others. Although GOT officials note that in the case of a discrepancy international obligations supersede Tunisian law, new legislation which is ready to be submitted before President Ben Ali will remove any potential contradictions (Ref E). (NOTE: Pharmaceutical company concerns with TRIPS-compliance and the GOT response to such concerns are addressed in para 8 and 9, respectively. END NOTE.)

Enforcement Steps Up... Somewhat

¶4. (SBU) Enforcement of Tunisia's solid IPR legislation remains the most significant weakness in the GOT's IPR regime. During 2007, the GOT's interagency enforcement brigade reported 735 control operations, which led to the issuance 314 infractions. This represents a slight increase from the nearly 700 raids conducted in 2006. In 2007, enforcement raids led to the closure of 73 establishments and to the submission of 34 cases before the courts. (NOTE: These court cases are still pending. END NOTE.) New GOT legislation that is ready to be submitted to the President should improve enforcement capabilities by easing the procedural burdens required to seize counterfeit goods and granting OTPDA enforcement authority (Ref E).

Slow Progress on Optical Media

15. (U) Optical media piracy remains widespread. Although French retail chain Carrefour voluntarily removed pirated optical discs from its shelves in response to GOT pressure in 2006 (Ref G), several major retailers -- including supermarket chains Geant and Monoprix -- continue to stock pirated CDs and DVDs. GOT officials have sent warnings to these retailers, but have yet to follow up the letters with enforcement. In addition to retail sale, pirated optical discs continue to be sold by small shop owners and at major markets (Ref D).

Software Piracy Decreasing

16. (SBU) Software piracy remains a concern, but the rate of software piracy appears to be decreasing annually. The Business Software Alliance shows that while the overall rate of software piracy remains high -- 79 percent for 2006 -- it has decreased from a high of 84 percent in 2004. Following the signature of an agreement with the GOT in 2006 (Ref H), Microsoft has noted improved cooperation with the GOT -- including GOT purchases of licensed Microsoft software.

Pharmaceuticals: Progress and Lingering Concerns

17. (SBU) In January 2007, the GOT suspended the "correlation system" which excluded drugs manufactured abroad in favor of locally produced generics (Ref F). However, drugs placed on the list of correlated pharmaceutical products prior to the

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suspension continued to be excluded from the marketplace. Following the suspension of the "correlation system," several US pharmaceutical companies have successfully removed their products from the list of correlated products and can now import them. In several cases where US company appeals are still pending with the Ministry of Public Health, these companies have been granted temporary import authorization. Despite these successes, other US pharmaceutical companies have thus far been unsuccessful in receiving import approval for their products. During a recent meeting with the Ambassador, Minister of Public Health Mondher Zenaïdi expressed his willingness to discuss and resolve any problems US pharmaceutical companies were experiencing with regard to correlation (Ref B).

18. (SBU) US pharmaceutical companies express lingering concerns that the GOT does not meet its obligations on data exclusivity and data protection (Ref F). The GOT continues to assert that it is in full compliance with TRIPS and other international obligations. The Embassy and other high-level visitors have repeatedly raised pharmaceutical concerns with data exclusivity during meetings with GOT officials. Minister for Development and International Cooperation Mohamed Nouri Jouini stated that if the United States demonstrates that Tunisia is not TRIPS compliant, the GOT will address the problem (Ref C). When asked about whether the GOT was prepared to address the data protection and data exclusivity concerns of the US pharmaceutical companies, Ministry of Commerce official Khemakhem said that if a US company could provide specific case evidence, he would be willing to investigate the issue.

Geographic Indicators

19. (SBU) The GOT passed a new law (no. 2007-68) in December 2007 setting up a regime for the creation and protection of geographic indicators for Tunisian handicrafts. The Embassy will monitor implementation of this law and report accordingly.

Comment

¶10. (SBU) Although we would like to see more, and faster, improvements on IPR enforcement and final resolution of outstanding US pharmaceutical company concerns, we do not believe that placing Tunisia on the Special 301 Watch List would positively influence either course of events. In our view, designating Tunisia as a Priority Watch List country would not alter GOT behavior, but would reduce our ability to press for enhanced IPR compliance. The Embassy actively engages the GOT by stressing IPR enforcement and pharmaceutical concerns in meetings with GOT officials and through technical assistance programs and training. GOT officials regularly participate in USPTO course offerings in the United States and will participate in a USPTO copyright enforcement seminar planned for March in Tunis. The TIFA Council scheduled for March 10-11 will provide the best opportunity to address continuing IPR concerns. IPR is the focus of one of the four TIFA working groups and we encourage private sector participation, particularly from pharmaceutical companies, during these meetings. We believe that constructive engagement between pharmaceutical companies and the GOT through the TIFA process, rather than watch listing, is the best approach to resolve ongoing pharmaceutical company concerns and IPR enforcement issues.
End Comment.

Please visit Embassy Tunis' Classified Website at:
<http://www.state.sgov.gov/p/nea/tunis/index.cfm>

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